

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHARLES GILBERT, JAMES M. JANKY,
CHARLES N. BRANCH, and MARK E. NICHOLS

Appeal No. 2000-1741
Application No. 08/654,401

ON BRIEF

Before KRASS, GROSS and SAADAT, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1, 4-7 and 10-22, all of the pending claims.

The invention is directed to a geographic information system (GIS) integrated with an automatic vehicle location system (AVL). The preferred embodiment, as set forth in the instant claims,

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includes a speech recognition system, wherein an operator may input attribute data into the system by a verbal communication, and specifies that the mobile data terminal which collects attribute data is not for the collection of route planning or computerized navigation data.

Representative independent claim 13 is reproduced as follows:

13. In a computer system including a processor coupled to a bus, a Global Positioning System (GPS) receiver coupled to said processor, and a memory unit coupled to said bus for storing information, a computer-implemented method for capturing attribute data for use in geographic information systems, said computer-implemented method comprising the steps of:

recording the location of an attribute to be collected, said computer implemented method not adapted for the collection of route planning or computerized navigation data;

receiving verbalized identifying information for said attribute at a mobile data terminal.

The examiner relies on the following references:

Behr et al. [Behr]	5,543,789	Aug. 06, 1996 (Filed Jun. 24, 1994)
Gazis et al. [Gazis]	5,610,821	Mar. 11, 1997 (Filed Nov. 18, 1994)

Claims 1, 4-7 and 10-22 stand rejected under 35 U.S.C. 103 as unpatentable over Gazis in view of Behr.

Reference is made to the brief and answer for the respective positions of appellants and the examiner.

OPINION

Gazis is directed to an optimal route planning system and Behr is directed to a computerized navigation system. Taking broad independent claim 13 as exemplary, it appears to be the examiner's position that the in-vehicle unit 6 of Gazis is the claimed "mobile data terminal," the GPS receiver 24 is the claimed GPS receiver and the voice recognition system described at column 4, lines 29-33, allows for the claimed "receiving verbalized identifying information."

The examiner notes that Gazis doesn't use the term, "geographical mapping" but teaches that it is well known to track the travel of a vehicle, as well as providing route information. The examiner turns to Behr for the teaching of providing map information for many metropolitan regions and contends that it would have been obvious to combine the regional and surroundings explorer function of Behr with the system of Gazis "because both systems are for navigation purposes to help users travel safely and Behr teaches that his additional mapping features provide further convenience to help people travel within desired time and distances" [answer-page 4].

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Broad independent claim 13 does not include the limitation of "geographical mapping" per se. However, in any event, we will not sustain the examiner's rejection of the claims under 35 U.S.C. 103 because, in our view, the examiner has not established a prima facie case of obviousness with regard to the instant claimed subject matter.

Each of the independent claims includes at least the limitation of the computer or the mobile data terminal or the portable integrated geographic information and automatic vehicle location system "not adapted for the collection of route planning or computerized navigation data." The examiner notes this limitation, at page 4 of the answer, but dismisses this "negative limitation" as not distinguishing of the art of record because neither applied reference "so limits itself that the systems could not include some information for uses besides route planning or navigation. In fact, Behr teaches that it is desirable to save various attributes of a point of interest," e.g., parks, schools, hospitals, restaurants, golf courses, museums and airports.

The examiner misses the point. It is not a matter of whether the applied references "could" not include some information other than route planning or navigation. The reality

is that Gazis *does* disclose an optimal route planning system which collects route planning data and Behr *does*, in fact, disclose a computerized navigation system which collects computerized navigation data. The instant claimed invention *explicitly excludes the collection of route planning or computerized navigation data*. Albeit a negative limitation, this is still a claim limitation which must be considered by the examiner when evaluating the prior art which is applied against the claims. Because both Gazis and Behr provide for the collection of data which is explicitly excluded by the claim language, even if they may, in fact, also disclose the collection of other data, the instant claimed subject matter is not suggested by the references because the examiner has pointed to nothing in those references which would have suggested precluding collection of route planning or computerized navigation data. Of course, this is a double edged sword for appellants since, at the same time, any system which is adapted to collect route planning or computerized navigation data, of any kind, would not infringe the instant claimed subject matter since the claims explicitly exclude this from forming any part of the instant claimed subject matter. The claims also exclude any disclosed embodiment of the invention wherein route planning or computerized navigation data

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may be collected.

In any event, since the examiner has not convincingly explained how or why the applied references suggest an explicit claim limitation, albeit a negative one, no prima facie case of obviousness has been established.

The examiner's decision rejecting claims 1, 4-7 and 10-22 under 35 U.S.C. 103 is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
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ANITA PELLMAN GROSS)	BOARD OF PATENT
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